

## § 102.25

## 37 CFR Ch. I (7–1–11 Edition)

during personal access to a record by another individual, provided the provisions of § 102.25(f) are satisfied.

(e) When the provisions of this subpart are alleged to impede an individual in exercising his or her right to access, USPTO will consider, from an individual making a request, alternative suggestions regarding proof of identity and access to records.

(f) An individual shall not be required to state a reason or otherwise justify his or her request for access to a record.

[65 FR 52917, Aug. 31, 2000, as amended at 68 FR 14338, Mar. 25, 2003; 70 FR 10490, Mar. 4, 2005]

### § 102.25 Disclosure of requested records to individuals.

(a)(1) The Privacy Officer shall act promptly upon each request. Every effort will be made to respond within ten working days (*i.e.*, excluding Saturdays, Sundays, and legal public holidays) of the date of receipt. If a response cannot be made within ten working days due to unusual circumstances, the Privacy Officer shall send an acknowledgment during that period providing information on the status of the request and asking for any further information that may be necessary to process the request. “Unusual circumstances” shall include circumstances in which

(i) A search for and collection of requested records from inactive storage, field facilities or other establishments is required;

(ii) A voluminous amount of data is involved;

(iii) Information on other individuals must be separated or expunged from the particular record; or

(iv) Consultations with other agencies having a substantial interest in the determination of the request are necessary.

(2) If the Privacy Officer fails to send an acknowledgment within ten working days, as provided above in paragraph (a) of this section, the requester may ask the General Counsel to take corrective action. No failure of the Privacy Officer to send an acknowledgment shall confer administrative finality for purposes of judicial review.

(b) *Grant of access*—(1) *Notification*. An individual shall be granted access to a record pertaining to him or her, except where the provisions of paragraph (g)(1) of this section apply. The Privacy Officer will notify the individual of a determination to grant access, and provide the following information:

(i) The methods of access, as set forth in paragraph (b)(2) of this section;

(ii) The place at which the record may be inspected;

(iii) The earliest date on which the record may be inspected and the period of time that the records will remain available for inspection. In no event shall the earliest date be later than thirty calendar days from the date of notification;

(iv) The estimated date by which a copy of the record could be mailed and the estimate of fees pursuant to § 102.31. In no event shall the estimated date be later than thirty calendar days from the date of notification;

(v) The fact that the individual, if he or she wishes, may be accompanied by another individual during personal access, subject to the procedures set forth in paragraph (f) of this section; and,

(vi) Any additional requirements needed to grant access to a specific record.

(2) *Methods of access*. The following methods of access to records by an individual may be available depending on the circumstances of a given situation:

(i) Inspection in person may be had in a location specified by the Privacy Officer during business hours;

(ii) Transfer of records to a Federal facility more convenient to the individual may be arranged, but only if the Privacy Officer determines that a suitable facility is available, that the individual's access can be properly supervised at that facility, and that transmittal of the records to that facility will not unduly interfere with operations of USPTO or involve unreasonable costs, in terms of both money and manpower; and

(iii) Copies may be mailed at the request of the individual, subject to payment of the fees prescribed in § 102.31. USPTO, on its own initiative, may elect to provide a copy by mail, in

which case no fee will be charged the individual.

(c) Access to medical records is governed by the provisions of §102.26.

(d) USPTO will supply such other information and assistance at the time of access as to make the record intelligible to the individual.

(e) USPTO reserves the right to limit access to copies and abstracts of original records, rather than the original records. This election would be appropriate, for example, when the record is in an automated data media such as tape or diskette, when the record contains information on other individuals, and when deletion of information is permissible under exemptions (for example, 5 U.S.C. 552a(k)(2)). In no event shall original records of USPTO be made available to the individual except under the immediate supervision of the Privacy Officer or the Privacy Officer's designee.

(f) Any individual who requests access to a record pertaining to that individual may be accompanied by another individual of his or her choice. "Accompanied" includes discussion of the record in the presence of the other individual. The individual to whom the record pertains shall authorize the presence of the other individual in writing. The authorization shall include the name of the other individual, a specific description of the record to which access is sought, the USPTO control number assigned to the request, the date, and the signature of the individual to whom the record pertains. The other individual shall sign the authorization in the presence of the Privacy Officer. An individual shall not be required to state a reason or otherwise justify his or her decision to be accompanied by another individual during personal access to a record.

(g) *Initial denial of access*—(1) *Grounds.* Access by an individual to a record which pertains to that individual will be denied only upon a determination by the Privacy Officer that:

(i) The record is exempt under §102.33 or §102.34, or exempt by determination of another agency publishing notice of the system of records, as described in §102.23(f);

(ii) The record is information compiled in reasonable anticipation of a civil action or proceeding;

(iii) The provisions of §102.26 pertaining to medical records temporarily have been invoked; or

(iv) The individual has unreasonably failed to comply with the procedural requirements of this part.

(2) *Notification.* The Privacy Officer shall give notice of denial of access to records to the individual in writing and shall include the following information:

(i) The Privacy Officer's name and title or position;

(ii) The date of the denial;

(iii) The reasons for the denial, including citation to the appropriate section of the Act and this part;

(iv) The individual's opportunities, if any, for further administrative consideration, including the identity and address of the responsible official. If no further administrative consideration within USPTO is available, the notice shall state that the denial is administratively final; and

(v) If stated to be administratively final within USPTO, the individual's right to judicial review provided under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(3) *Administrative review.* When an initial denial of a request is issued by the Privacy Officer, the individual's opportunities for further consideration shall be as follows:

(i) As to denial under paragraph (g)(1)(i) of this section, two opportunities for further consideration are available in the alternative:

(A) If the individual contests the application of the exemption to the records, review procedures in §102.25(g)(3)(ii) shall apply; or

(B) If the individual challenges the exemption itself, the procedure is a petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e). If the exemption was determined by USPTO, such petition shall be filed with the General Counsel. If the exemption was determined by another agency (as described in §102.23(f)), USPTO will provide the individual with the name and address of the other agency and any relief sought by the individual shall be that provided by the

## § 102.26

## 37 CFR Ch. I (7–1–11 Edition)

regulations of the other agency. Within USPTO, no such denial is administratively final until such a petition has been filed by the individual and disposed of on the merits by the General Counsel.

(ii) As to denial under paragraphs (g)(1)(ii) of this section, (g)(1)(iv) of this section or (to the limited extent provided in paragraph (g)(3)(i)(A) of this section) paragraph (g)(1)(i) of this section, the individual may file for review with the General Counsel, as indicated in the Privacy Officer's initial denial notification. The procedures appearing in § 102.28 shall be followed by both the individual and USPTO to the maximum extent practicable.

(iii) As to denial under paragraph (g)(1)(iii) of this section, no further administrative consideration within USPTO is available because the denial is not administratively final until expiration of the time period indicated in § 102.26(a).

(h) If a request is partially granted and partially denied, the Privacy Officer shall follow the appropriate procedures of this section as to the records within the grant and the records within the denial.

### § 102.26 Special procedures: Medical records.

(a) No response to any request for access to medical records by an individual will be issued by the Privacy Officer for a period of seven working days (*i.e.*, excluding Saturdays, Sundays, and legal public holidays) from the date of receipt.

(b) USPTO has published as a routine use, for all systems of records containing medical records, consultations with an individual's physician or psychologist if, in the sole judgment of USPTO, disclosure could have an adverse effect upon the individual. The mandatory waiting period set forth in paragraph (a) of this section will permit exercise of this routine use in appropriate cases. USPTO will pay no cost of any such consultation.

(c) In every case of a request by an individual for access to medical records, the Privacy Officer shall:

(1) Inform the individual of the waiting period prescribed in paragraph (a) of this section;

(2) Obtain the name and address of the individual's physician and/or psychologist, if the individual consents to give them;

(3) Obtain specific, written consent for USPTO to consult the individual's physician and/or psychologist in the event that USPTO believes such consultation is advisable, if the individual consents to give such authorization;

(4) Obtain specific, written consent for USPTO to provide the medical records to the individual's physician or psychologist in the event that USPTO believes access to the record by the individual is best effected under the guidance of the individual's physician or psychologist, if the individual consents to give such authorization; and

(5) Forward the individual's medical record to USPTO's medical expert for review and a determination on whether consultation with or transmittal of the medical records to the individual's physician or psychologist is warranted. If the consultation with or transmittal of such records to the individual's physician or psychologist is determined to be warranted, USPTO's medical expert shall so consult or transmit. Whether or not such a consultation or transmittal occurs, USPTO's medical officer shall provide instruction to the Privacy Officer regarding the conditions of access by the individual to his or her medical records.

(d) If an individual refuses in writing to give the names and consents set forth in paragraphs (c)(2) through (c)(4) of this section and USPTO has determined that disclosure could have an adverse effect upon the individual, USPTO shall give the individual access to said records by means of a copy, provided without cost to the requester, sent registered mail return receipt requested.

### § 102.27 Procedures for making requests for correction or amendment.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request for correction or amendment to USPTO. The request should be made either in person or by mail addressed to the Privacy Officer